APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,769	07/01/2003	Christopher Che	021756-017600US	4994

51206 7590 03/09/2007		
TOWNSEND AND TOWNSEND AND CREW LLP		EXAMINER
TWO EMBARCADERO CENTER		MYINT, DENNIS Y
8TH FLOOR	ART UNIT	PAPER NUMBER
SAN FRANCISCO, CA 94111-3834	2162	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

	Application No.	Applicant(s)
	10/612,769	CHE ET AL.
Office Action Summary	Examiner	Art Unit	
	Dennis Myint	2162	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3__ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 January 2007*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6,13,14 and 16-19* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6, 13-14, and 16-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *01 July 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

1. This communication is responsive to Applicant's Amendment, filed on

January 16, 2007.

2. Claims 1-6, 13-14, and 16-19 are pending in this application. Claims 1 and

13 are independent claims. In the Amendment filed on January 16, 2007, Claims

1 was amended. This office action is made final.

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for

all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or
> described as set forth in section 102 of this title, if the differences between the subject
> matter sought to be patented and the prior art are such that the subject matter as a whole
> would have been obvious at the time the invention was made to a person having ordinary
> skill in the art to which said subject matter pertains. Patentability shall not be negatived
> by the manner in which the invention was made.

4.   This application currently names joint inventors. In considering

patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that

the subject matter of the various claims was commonly owned at the time any

inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor

and invention dates of each claim that was not commonly owned at the time a

later invention was made in order for the examiner to consider the applicability of

35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35

U.S.C. 103(a).

5.   Claims 1, 3, 5, 13-14, and 18 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Barrick Jr. et al. (hereinafter "Barrick") (U.S. Patent

Number 6625647) in view of Chen et al. (hereinafter "Chen") (U.S. Patent

Number 5793976) and further in view of Dutta et al., (hereinafter "Dutta") (U.S.

Patent Application Publication Number 2002/0161794).

        Referring to claim 1, Barrick Jr. et al. is directed to a system and method

for assembling timing data in a multi-layer server environment, comprising:

        "generating a first HTML request" (Barrick, Column 4, Line 41-65);

        "depositing a time of generation of the first HTML based request in one or

more hidden data fields associated with the first HTML based request" " (Barrick,

Column 9 Line 1-10 *Delta Field*, Figure 5: *Delta Field 502,* and Column 7, Line 43

through Column 8 Line 20);

        "forwarding the HTML based request to one or more servers" (Barrick,

Column 7 Lines 15-22);

        "generating an HTML based response" (Barrick, Column 7 Lines56-66);

        "transferring" and "forwarding" (Barrick, Column 7 Lines 56-66)

        "receiving the HTML based response to a browser for displaying the

HTML based response, the browser operable to store a time of arrival" (Barrick,

Column 8 Lines 33-38, i.e., *By controlling the sending of the HTTP GET request*

for the desired HTML, page, the browser agent is able to record the time the

request was send and monitor the receiving of the page to determine the

download time);

Barrick Jr. et al. teaches that the response is sent back from the server to

the browser agent, located at the client machine, which calculates the round-trip

time based on the request time and arrival time at the browser (Barrick Jr. et al.,

Column 7 56-66).

Barrick Jr. et al. does not explicitly disclose the limitations:

""the arrival times", "departure time", and "transferring the arrival times, the

time of generation of the HTML based request, and the departure times to the

one or more hidden data fields associated with the HTML based response"; and

"a time of display for the HTML based response".

Chen teaches the limitations:

"the arrival times", and "departure time" (Chen, Figure 2 and Column 7

Line 50 through Column 8 Line 54), and "transferring the arrival times, the time of

generation of the (HTML based) request, and the departure times to the one or

more hidden data fields associated with the (HTML based) response" (Chen,

Column 6 Line 55 through Column 7 Line 5; and Column 8 Line Column 9 Line

14, i.e., *A particular advantage of the node-by-node delay measurement packet*

is that it allows the computation and relay of instantaneous delay

information....... Alternatively, additional time stamps can be sued for each node,

allowing the switch to merely record in one timestamp field the time that the

packet arrives, and then record the time the packet leaves into another

timestamp field);

Chen teaches a method and system for monitoring of network

performance, wherein a special class of packet called *management packet*

(Chen, Column 6 Line 55-60) is defined which includes an information field which

is modified by all the nodes along a virtual connection (Chen Column 6 Line 55

through Column 7 Line 5; and Column 8 Line Column 9 Line 14, i.e., *A particular*

advantage of the node-by-node delay measurement packet is that it allows the

computation and relay of instantaneous delay information....... Alternatively,

additional time stamps can be sued for each node, allowing the switch to merely

record in one timestamp field the time that the packet arrives, and then record

the time the packet leaves into another timestamp field). Said management

packets are used to collect performance parameters along any virtual

connection, including packet delays at each intermediate node where arrival time

and departure time at each node are recorded in multiple timestamp fields in the

packet, which is used to calculate delay time at each and recorded into the

packet (Chen et al., Figure 2 and Column 7 Line 50 through Column 8 Line 54).

Dutta teaches the limitation: "a time of display for the HTML based

response" (Paragraph 0047, i.e., *the browser maintains a list of all the screen*

image that have been captured within a configurable duration of time, and the

time that the screen image was captured).

At the time the invention was made, it would have been obvious to a

person of ordinary skill in the art to add the feature of acquiring arrival and depart

time at each node (servers or switches or routers), as taught by Chen, and the

feature of storing a time of display, as taught by Dutta, to the system and method

taught by Barrick et al. so that the combined method of Barrick in view of Chen

teaches the limitations:

"generating a first HTML based request" (Barrick, Column 4, Line 41-65);

"depositing a time of generation of the first HTML based request in one or

more hidden data fields associated with the first HTML request" (Barrick, Column

7 Lines56-66);

"forwarding the first HTML based request to one more servers that each

deposit an arrival time and a departure time for the first HTML based request in

the one or more hidden data fields associated with the first HTML based request"

(Barrick, Column 7 Lines 15-22; and Chen, Column 6 Line 55 through Column 7

Line 5; and Column 8 Line Column 9 Line 14);

"generating an HTML based response in response to receiving the first

HTML based request" (Barrick, Column 7 Lines56-66);

"depositing a time of generation of the HTML based response in one or

more hidden data fields associated with the HTML based response" (Barrick,

Column 7 Lines56-66; Chen, Column 8 Line Column 9 Line 14; Note that in the

chain of nodes in the method of Chen, a node's response becomes a request to

next node in the chain; See Figures 3, 4, and 5);

"transferring the arrival times, the time of generation of the HTML based

request, and the departure times to the one or more hidden data fields

associated with the HTML based response" (Barrick, Column 9 Line 1-10 *Delta

Field*, Figure 5: *Delta Field 502,* and Column 7, Line 43 through Column 8 Line

20; and Chen, Column 8 Line Column 9 Line 14, i.e., *A particular advantage of*

the node-by-node delay measurement packet is that it allows the computation

and relay of instantaneous delay information....... Alternatively, additional time

stamps can be sued for each node, allowing the switch to merely record in one

timestamp field the time that the packet arrives, and then record the time the

packet leaves into another timestamp field; Note that, in Chen's method, arrival

times and departure times are recorded into multiple timestamp fields at each

node, thus transferring/storing the arrival times, the times of generation of the

request, and the departure times. At the beginning of this chain, time of

generation is recorded. After that, time of arrival and departure are recorded all

the way along the chain);

"forwarding the HTML based response to one or more servers each

deposit an arrival time and a departure time in the one more hidden data fields

associated with HTMO based response" (Barrick, Column 9 Line 1-10 *Delta*

Field, Figure 5: *Delta Field 502,* and Column 7, Line 43 through Column 8 Line

20; and Chen, Column 8 Line Column 9 Line 14,);

"receiving the HTML based response to a browser for displaying the

HTML based response, the browser operable to store a time of arrival and a time

of display for the HTML based response" (Barrick, Column 8 Lines 33-38, i.e., *By*

controlling the sending of the HTTP GET request for the desired HTML, page,

the browser agent is able to record the time the request was send and monitor

the receiving of the page to determine the download time; and Dutta Paragraph

0047, i.e., *the browser maintains a list of all the screen image that have been*

captured within a configurable duration of time, and the time that the screen

image was captured);

"generating a second HTML based request, the second based request

including the times of generation, arrival times, departure times, and time of

display for the first HTML based request and HTML based response in one or

more hidden data fields associated with the second HTML based request"

(Barrick, Column 4, Line 41-65; Barrick, Column 9 Line 1-10 *Delta Field*, Figure

5: *Delta Field 502,* and Column 7, Line 43 through Column 8 Line 20; and Chen,

Column 8 Line Column 9 Line 14; Note that the method of Barrick in view of

Chen can repeat the whole process and generate a second HTML based request

OR, on the way a long the chain of nodes, more and more HTML-based requests

can be generated which would included times of generation, arrival times,

departure times, and time of display for the previously generated HTML request

(i.e., first HTML based request). Running software processes repeatedly in a loop

is notoriously well known in the art).

One would have been motivated to do so in order that *the information field*

of a management cell is modified by all the network nodes along a virtual

connection, not just by the virtual end point" (Chen et al., Column 6 Line 65

through Column 7 Line 5) and also because recording the time of display,

duration of execution/delay, time of generation, time of arrival, and time of

departure are well known in the art of network performance measuring as well as

in the art of web-based advertisement.

Referring to claim 3, Barrick teaches the limitation:

"storing the times of generation, arrival times, departure times, and time

of display in the hidden data fields in the HTML based response in a database"

(Barrick, Column 5 Line 1-10 and Column 10 Line 52-58; Barrick teaches the

storing of the arrival times and departure times in the hidden data fields in the

second HTML based response in a database (Barrick Column 4 Line 66 through

Column 5 Line 12, i.e., *database server 112;* Barrick, Column 5 Line 1-10 and

Column 10 Line 52-58); and Barrick, Column 4, Line 41-65; Barrick, Column 9

Line 1-10 *Delta Field*, Figure 5: *Delta Field 502,* and Column 7, Line 43 through

Column 8 Line 20; and Chen, Column 8 Line Column 9 Line 14; Note that the

method of Barrick in view of Chen can repeat the whole process and generate a

second HTML based request OR, on the way a long the chain of nodes, more

and more HTML-based requests can be generated which would included times of

generation, arrival times, departure times, and time of display for the previously

generated HTML request (i.e., first HTML based request). Running software

processes repeatedly in a loop is notoriously well known in the art; and Dutta,

Paragraph 0047, i.e., *the browser maintains a list of all the screen image that*

have been captured within a configurable duration of time, and the time that the

screen image was captured).

Referring to claim 5, Chen teaches the limitation:

"at least one of the arrival time and the departure time is based on a local

time associated with one or more servers" (Chen, Column 7 Line 17-27, i.e., *local*

measurement of packet delay).

Referring to claim 18, Barrick is directed to the limitation:

"at least one first server is a web server" (Column 4 Line 58-60 , i.e., *web*

server 104, and Figure 1C: *web server 104*).

Claim 13 is rejected on the same basis as claim 1.

Claim 14 is rejected on the same basis as claim 3.

6.   Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Barrick in view of Chen and further in view of Dutta and further in view of Fish et

al. (hereinafter "Fish") (U.S. Patent Application Publication Number

2004/0111394).

        Referring to claim 2, Barrick in view of Chen does not explicitly disclose

the limitation:

"displaying the one or more hidden data fields to a user".

Fish teaches the limitation:

"displaying the one or more hidden data fields to a user" (Paragraph 0023,

034, and 0038-0039). Fish teaches a method for writing debug data into hidden

fields of HTML or XML document, which hidden until the user makes said hidden

fields visible to be displayed (Paragraph 0023, 034, and 0038-0039).

At the time the invention was made, it would have been obvious to a

person of ordinary skill in the art to add the feature of displaying hidden data

fields as taught by Fish et al. to the system and method taught by Barrick Jr. et

al. in view of Chen et al. as applied to claim 1 above so that, the method of claim

1 would further comprise displaying the one or more hidden data fields to a user.

One would have been motivated to do so in order to simply allow the user

analyze the hidden data instantly rather than storing the hidden data in a

database.

7.   Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Barrick in view of Chen and further in view of Dutta and further in view of

Packman et al., (hereinafter "Packman") (U.S. Patent Application Publication

Number 2003/0225877).

As per claim 4, Barrick in view of Chen and further in view of Dutta

teaches the limitations: "performing analysis on the times of generation, arrival

times, departure times, and time of display in the database to determine a time of

delay at each server and at the browser for the first HTML based request and the

HTML based response" (Barrick, Column 10 Lines 55-61; Barrick, Column 5 Line

1-10 and Column 10 Line 52-58; Barrick, Column 4, Line 41-65; Barrick, Column

9 Line 1-10 Delta Field, Figure 5: Delta Field 502, and Column 7, Line 43 through

Column 8 Line 20; Chen, Column 8 Line Column 9 Line 14; and Dutta,

Paragraph 0047).

Barrick in view of Chen and further in view of Dutta does not explicitly

teach the limitation: "the one or more servers including at least one application

server and a database server".

Packman teaches the limitation:

"the one or more servers including at least one application server and a

database server"(Paragraph 0032, i.e., *application servers 340 and/or database*

servers).

At the time the invention was made, it would have been obvious to a

person of ordinary skill in the art to add the feature of measuring performance of

application servers and/or database servers, as taught by Packman, to the

method and system of Barrick in view of Chen and further of Dutta so that the

resultant method would comprise one or more servers which are application

servers and database servers. One would have been motivated to do so because

measuring performance of application servers and database servers are

notoriously well known in the art (Packman Paragraphs 0004-0005).

8.   Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Barrick in view of Chen and further in view of Engel (hereinafter "Engel") (U.S.

Patent Application Publication Number 2004/0246996).

Referring to claim 6, Barrick in view of Chen does not explicitly recite the limitation:

"wherein the local time of at least one of the one or more servers is synchronized with at least one other of the one or more servers".

Engel teaches the limitation:

"wherein the local time of at least one of the one or more servers is synchronized with at least one other of the one or more servers" (Paragraph 0017). Engel teaches a method for time synchronization across communication devices wherein local time of one or more nodes is synchronized by exchanging timing packets (Engel Paragraph 0017).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to add the feature of synchronizing local time among nodes as taught by Engel to the system and method taught by Barrick Jr. et al. in view of Chen et al. as applied to claim 5 so that, in the resultant system and method, local time of at least one of the one or more servers will be synchronized with at least one other of the one or more servers. One would have been motivated to do so in order to determine delay time between nodes (Engel Paragraph 0003).

Claim 29 is rejected on the same basis as claim 6.

9.   Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Barrick in view of Chen and further in view of Blythe et al. (hereinafter "Blythe")

(U.S. Patent Application Publication Number 2004/0139433).

       Referring to claim 19, Barrick in view of Chen does not explicitly teach the

limitation:

       "at least one second server is an application server".

       Blythe teaches the limitation:

       "at least one second server is an application server" (Paragraph 0036 and

0054). Blythe et al. teaches the use of application servers in distributed

environment (Blythe et al., Paragraph 0036 and 0054).

              At the time the invention was made, it would have been obvious to

a person of ordinary skill in the art to add the use of application servers to the

method and system of Barrick Jr. et al. in view of Chen et al. as applied to claim

13 so that said system and method would comprise at least one second server

which is an application server. One would have been motivated to do so in order

to simply measure performance metrics of such servers.

10.   Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Barrick in view of Chen and further in view of Dutta and further

in view of Struble (U.S. Patent Application Publication Number 2003/0004796).

As per claim 16, Barrick in view of Chan and further in view of Dutta as applied to claim 1 does not explicitly teach the limitation: "further comprising an internal clock associated with the at least one first server for keeping local time".

However, Struble teaches the limitation "further comprising an internal clock associated with the at least one first server for keeping local time" (Paragraph 0023, i.e., *The internal clock 216 is configured to maintain current local time*).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to add the feature of using an internal clock to keep local time, as taught by Struble, to the method and system of Barrick in view of Chan and further in view of Dutta so that the resultant method would comprise an internal clock which is associated with at least one server for keeping local time. One would have been motivated to do so in order to have two computers work *relative to current conditions and relative to the current time* (Struble, Paragraph 0023).

Response to Arguments

11.   Applicant's arguments filed on January 16, 2007 have been considered

but are not persuasive.

        Referring to claim 1, Applicant argued that *Although the browser agent of*

Barrick records the time of send of the HTTP GET request, there is no mention

that the browser agent records the time of sending the HTTP GET request within

the HTTP GET request. In response, it is pointed out that said limitation (the time

of sending the HTTP GET request) is recited in the claim. In response to

applicant's argument that the references fail to show certain features of

applicant's invention, it is noted that the features upon which applicant relies (i.e.,

the time of sending the HTTP GET request) are not recited in the rejected

claim(s). Although the claims are interpreted in light of the specification,

limitations from the specification are not read into the claims. See *In re Van*

Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

        Applicant additionally argued that *Accordingly, Barrick dose not teach or*

suggest depositing a time of generation of the first HTML based request in one or

more hidden data fields associated with the first HTML based request, as

claimed by Applicants. This argument is inappropriate and invalid. Independent

claims of the instant application are rejected under 35 U.S.C. § 103 citing the

combination of Barrick, Chen, and Dutta. As such, Barrick teaches depositing

time-related data in the delta field, Chen teaches arrival times, departure times,

and transferring arrival times, the times of generation of the request and the departure times to one more hidden data fields associated with the response, and Dutta teaches a time of display of the HTML based response. As such, Barrick, Chen and Dutta a combination teaches all the limitations of the independent claims of the instant application.

Therefore, rejections of independent claims 1 and 13 and their respective dependent claims stand firm.

Conclusion

12.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of

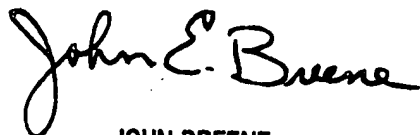time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire

THREE MONTHS from the mailing date of this action. In the event a first reply is

filed within TWO MONTHS of the mailing date of this final action and the advisory

action is not mailed until after the end of the THREE-MONTH shortened statutory

period, then the shortened statutory period will expire on the date the advisory

action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

calculated from the mailing date of the advisory action. In no event, however, will

the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from

the examiner should be directed to Dennis Myint whose telephone number is

(571) 272-5629. The examiner can normally be reached on 8:30AM-5:30PM

Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the

examiner's supervisor, John Breene can be reached on (571) 272-4107. The fax

phone number for the organization where this application or proceeding is

assigned is 571-273-8300.

Information regarding the status of an application may be obtained from

the Patent Application Information Retrieval (PAIR) system. Status information

for published applications may be obtained from either Private PAIR or Public

PAIR. Status information for unpublished applications is available through

Private PAIR only. For more information about the PAIR system, see http://pair-

direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-

free).

JOHN BREENE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

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AU-2162